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EEOC v. Tropiano Transportation Services, Inc.

Judge Paul S. Diamond

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EEOC v. Tropiano Transportation Services, Inc.

Keywords

EEOC, Tropiano Transportation Services Inc., 07-cv-2179, Consent Decree, Hostile Work Environment, Sex, Female, Transportation, Employment Law, Title VII

ESD

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)

Plaintiff,)

v.)

TROPIANO TRANSPORTATION)
SERVICES, INC.)

Defendant.)
-----)

CIVIL ACTION NO.: 07-cv-2179
Honorable Paul S. Diamond

FILED

OCT 17 2007

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

CONSENT DECREE

Introduction

A. This action was instituted by the U.S. Equal Employment Opportunity Commission (“EEOC” and/or “the Commission”) on or about May 30, 2007 against Tropiano Transportation Services, Inc. (“Tropiano” and/or “Defendant”) to enforce provisions of § 706(f)(1) and (3) of Title VII of the Civil Rights of 1964, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”). In its Complaint, the Commission alleged that Defendant subjected Charging Party, Belinda Bates, and a class of similarly situated females including Carmen Smith, Nicole Dasconio and Tammie Johnson (the “Class”), to a hostile work environment, including the making of offensive comments and degrading comments about women. The Complaint alleged that these actions created a gender based hostile and offensive work environment for them as females.

Tropiano denies all of the allegations set forth in the Complaint.

B. This Consent Decree is entered into by and shall be final and binding between the EEOC and Tropiano, its directors, officers, agents, successors and assigns.

C. The Commission and Defendant agree to the entry of this Consent Decree, which shall fully and finally resolve all claims the EEOC raised in its Complaint in Civil Action No.07-cv-2179 (PSD). This Consent Decree shall not constitute either an adjudication of or finding on the merits of the complaint and shall not be construed as an admission by Defendant of any violation of Title VII.

Findings

D. Having carefully examined the terms and provisions of this Consent Decree, and based on the pleadings, record and stipulations of the parties, the Court finds: (1) it has jurisdiction of the parties and subject matter jurisdiction of this action; and (2) the terms of this Decree are fair, reasonable, equitable and just, and adequately protect the rights of the parties, and the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Non-Discrimination and Non-Retaliation

1. This Court has jurisdiction over the parties and subject matter of this action.

2. Defendant will not harass any employee on the basis of sex in violation of Title VII.

3. Defendant will not engage in any employment practices which retaliate in any manner against any person, including but not limited to Belinda Bates, Carmen Smith, Nicole Dasconio and Tammie Johnson, because of their opposition to any practice made an unlawful employment practice under Title VII or because either person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII.

4. Defendant shall only divulge to any identifiable employer or potential employer of Belinda Bates, Carmen Smith, Nicole Dasconio and Tammie Johnson, their respective start date, position title, final salary and end date and indicate that such limited disclosure is part of its business practice.

5. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of Defendant under Title VII or the EEOC's authority to process or litigate any charge of discrimination now pending or filed in the future against Defendant.

Monetary Relief

6. Defendant agrees to pay monetary relief in the total amount of one hundred twenty one thousand dollars (\$121,000.00) to be divided among Ms. Bates, Ms. Smith, Ms. Dasconio and Ms. Johnson as deemed appropriate by the EEOC in full settlement of the claims raised on their behalf against Defendant in the EEOC's Complaint. The respective amounts shall be paid in full satisfaction for all claims for damages of any kind and separately reported on IRS 1099 forms

and any other required federal, state and/or local tax reporting forms issued to Ms. Bates, Ms. Smith, Ms. Dasconio and Ms. Johnson. The respective checks will be mailed to Ms. Bates, Ms. Smith, Ms. Dasconio and Ms. Johnson at their respective residences or to their private counsel and a copy within five business days thereafter to the attention of Stephanie Marino, Trial Attorney, EEOC, 801 Market Street, Penthouse, Suite 1300, Philadelphia, PA 19107. In order to receive this monetary relief, Ms. Bates, Ms. Smith, Ms. Dasconio and Ms. Johnson must execute Releases which are to be provided by counsel for Defendant and which will set forth their respective settlement amounts. Late payment of the check will be subject to the accrual of interest on the unpaid amount, calculated pursuant to 28 U.S.C. § 1961. Payment of the monetary relief shall be made as follows within a twelve (12) month period:

(a) Within fifteen (15) days of receiving the executed release(s), Defendant shall make separate first payments as set forth by the EEOC to Ms. Bates, Ms. Smith, Ms. Dasconio and Ms. Johnson, the total of which shall equal sixty one thousand dollars (\$61,000.00);

(b) Within six (6) months of the first payment, Defendant shall make separate second payments as set forth by the EEOC to Ms. Bates, Ms. Smith, Ms. Dasconio and Ms. Johnson, the total of which shall equal thirty thousand dollars (\$30,000.00); and

(c) Within twelve (12) months of the first payment, Defendant shall make separate third payments as set forth by the EEOC to Ms. Bates, Ms. Smith, Ms. Dasconio and Ms. Johnson, the total of which shall equal thirty thousand dollars (\$30,000.00).

Posting of Notice

7. Within 20 business days after entry of this Decree, Defendant shall post at its Tropiano work site(s) on all bulletin boards, used by Defendant for communicating with employees, same-sized copies of the Notice attached as Exhibit A to this Decree. The Notice shall remain posted for three (3) years from the date of entry of this Decree. Defendant shall forward a certification that the Notice has been posted and dates of posting within 30 days after entry of this Decree to Stephanie Marino, Trial Attorney, EEOC, 801 Market Street, Penthouse, Suite 1300, Philadelphia, PA 19107. If posted copies become defaced, removed, marred or otherwise illegible, Defendant agrees to post a readable copy in the same manner as heretofore specified.

Non-Discrimination and Anti-Harassment Policies and Complaint Procedures

8. Defendant agrees to draft a policy against discrimination, harassment and retaliation and complaint procedures, which shall be drafted in plain and simple language. Defendant shall ensure that its policy or policies against discrimination, harassment and retaliation and related complaint procedures meet the following minimum criteria:

(a) state that Defendant: (i) prohibits discrimination against employees on the basis of sex, and prohibits retaliation in violation of Title VII; (ii) prohibits retaliation against employees for opposing employment practices they reasonably believe are discriminatory or for participating in an investigation by the EEOC or a state or local governmental agency of a charge of discrimination under Title VII; (iii) prohibits any act, policy or practice that has the effect of harassing or intimidating any employee on the basis of sex, in violation of Title VII; and (iv) prohibits any act, policy or practice that has the effect of creating, facilitating or permitting the existence of a work environment that is hostile to employees through acts such as physical/verbal abuse and derogatory comments based on sex, in violation of Title VII;

(b) include a complaint procedure designed to encourage employees to come forward with complaints regarding violations of its policy or policies against discrimination, harassment and retaliation, which shall meet the following minimum criteria: (i) provide effective mechanism(s) for reporting incidents of discrimination, harassment and retaliation; (ii) provide that the complaints of discrimination, harassment and/or retaliation can be made either in writing or verbally; (iii) identify an employee or employees at Defendant's worksite(s), to whom an employee can make a complaint; (iv) encourage prompt reporting by employees; and (v) provide assurances that complainants shall not be subjected to retaliation;

(c) provide for prompt investigation of complaints of harassment and/or retaliation;

(d) provide for prompt communication to the complaining party of the results of the investigation and any remedial actions taken or proposed; and

(e) provide for discipline up to and including discharge of an employee or supervisor who violates Defendant's policy or policies against discrimination, harassment and retaliation, and for increasingly severe discipline of repeat offenders.

9. Defendant shall distribute to all of its employees and newly-hired employees, its policy or policies against discrimination, harassment and retaliation within 60 days after entry of this Consent Decree.

10. Within 60 days after entry of this Consent Decree, Defendant shall advise Stephanie Marino, Trial Attorney, EEOC's Philadelphia District Office, that its policy or policies against discrimination, harassment and retaliation have been distributed to current employees, including temporary employees, and that new employees, including temporary employees, will receive these policies and an opportunity to acknowledge receipt. Defendant will retain copies of any acknowledgment of receipt form for an employee in the employee's personnel file.

11. Defendant shall once annually for the duration of the Consent Decree distribute a copy of its policy or policies against discrimination, harassment and retaliation with to each employee.

Supervisor Accountability

12. Defendant shall promote supervisor accountability by the following conduct:

(a) providing annual anti-discrimination training to all of its supervisory and managerial personnel as set forth in Paragraphs 13 for the duration of the Consent Decree;

(b) disciplining, up to and including discharge, any supervisor or manager who violates Defendant's policy or policies against discrimination, harassment and retaliation; and

(c) imposing on all managers and supervisory personnel a duty to administer their work areas to ensure compliance with Defendant's policy against discrimination, harassment and retaliation; and

(d) requiring all managers and supervisors to report any incidents and/or complaints of harassment and/or retaliation of which they become aware to the employee or employees designated to handle complaints of discrimination, harassment and retaliation.

Training

13. Defendant shall provide training on the requirements of Title VII as follows:

(a) Defendant agrees to provide annual training sessions for all Tropiano managerial and supervisory employees, Human Resources personnel, owner, and

any other employee responsible for responding to complaints of discrimination by a vendor approved by the EEOC, which may include current counsel. The training will cover employee rights and employer obligations under both Title VII and relevant state or local anti-discrimination laws, and will emphasize what constitutes unlawful harassment and discrimination in the workplace, how to keep the company free from such discrimination, what constitutes unlawful retaliation, and will summarize how to conduct a prompt and effective investigation into allegations, complaints or charges of discrimination;

(b) Defendant shall first provide training in accordance with Paragraph 13(a) by no later than 90 days after entry of this Consent Decree and also shall provide such training in calendar years 2008, 2009 and 2010.

14. Defendant shall obtain the EEOC's approval of its proposed trainer prior to each year's training sessions.

15. Defendant agrees at its expense to provide the EEOC with copies of all pamphlets, brochures, outlines or other written materials, if any, provided to attendees of training sessions. Even though the EEOC has approved of or designated a trainer to provide training for one year, it is not required to approve of or designate the same trainer for future training sessions.

16. Defendant shall certify to the EEOC in writing within 10 business days after the training sessions required by Paragraph 13 have occurred that the training has taken place and the personnel who attended. Such certification shall

include: (i) the dates, location and duration of the training session; (ii) a copy of the registry of attendance, including the name and position of each person in attendance; and (iii) a listing of the employee or employees at Tropiano's work site(s), responsible for responding to Title VII complaints made at Tropiano as of the date of the training.

17. Defendant shall furnish to the EEOC the following written reports annually for a period of three (3) years following entry of this Decree with the first report due six months after entry of the Decree and the final report due 36 months after entry of the Decree. Each such report shall contain:

(a) a certification by Defendant that the Notice required to be posted by Paragraph 7 was posted during the six months preceding the report;

(b) a certification by Defendant that it has or will distribute the policy or policies against discrimination, harassment and retaliation annually to employees and that Defendant has disseminated the policy against discrimination, harassment and retaliation to all new employees, including temporary employees, hired within the six-month period preceding the report;

(c) a certification that Defendant has complied with training requirements of this Consent Decree;

(d) a summary of any additional actions Defendant took to prevent discrimination, harassment and retaliation at Tropiano's work site(s) during the six-month period preceding the report.

Dispute Resolution

18. In the event either party to this Decree believes the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance within 20 days of the alleged non-compliance and afford the alleged non-complying party 20 business days to remedy the non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within 20 business days, the complaining party may apply to the Court for appropriate relief.

Miscellaneous Provisions

19. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

20. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, successors and assigns of Defendant in their capacities as representatives, agents, directors and officers of Defendant and not in their individual capacities. This paragraph shall not be construed as placing any limit on remedies available to the Court in the event any individual is found in contempt for a violation of this Decree.

21. This Consent Decree shall fully and finally resolve all claims which were raised by the EEOC in its Complaint in Civil Action No. 07-cv-2179 (PSD).

22. This Consent Decree shall be filed in the United States District Court for the Eastern District of Pennsylvania and shall continue in effect for three (3) years. During this time, this Court shall retain jurisdiction over this matter and the parties for purposes of enforcing compliance with the Decree, including issuing such orders as may be required to effectuate its purposes. Any application by any party to modify or vacate this Consent Decree during such period shall be made by motion to the Court on no less than 30 days' notice to the other party. Should any material disputes under this Decree remain unresolved after this three-year period, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Consent Decree) until such time as all disputes have been resolved.

23. The Clerk of the District Court is hereby directed to send a file-stamped copy of this Consent Decree to counsel of record.

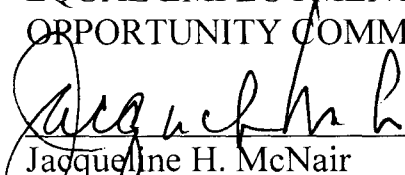
For Plaintiff EEOC:

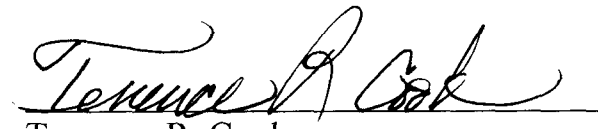
Ronald S. Cooper
General Counsel

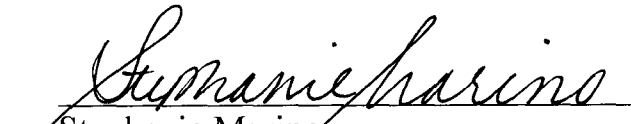
James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel
Wash., D.C.

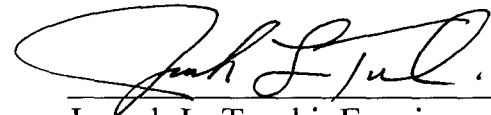
EQUAL EMPLOYMENT
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Transportation Services, Inc.:


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Salmon, Ricchezza, Singer &
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(215) 606-6605
(215) 606-6601 - Fax

By the Court:


PAUL S. DIAMOND
U.S. DISTRICT JUDGE

Date:

10/16/07

EXHIBIT A

NOTICE TO ALL TROPIANO TRANSPORTATION SERVICES, INC. EMPLOYEES

This Notice is posted pursuant to a Consent Decree entered by the federal court for the Eastern District of Pennsylvania in EEOC v. Tropiano Transportation Services, Inc., Civil Action Number 07-cv-2179, resolving a lawsuit filed by the Equal Employment Opportunity Commission (“EEOC”) against Tropiano Transportation Services, Inc. (“Tropiano”).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended (“Title VII”), prohibits discrimination against employees and applicants for employment based upon national origin, sex, race, color or religion. Title VII further prohibits retaliation against employees or applicants who avail themselves of their rights under Title VII by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII.

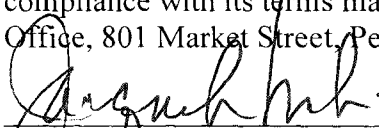
In its lawsuit, the EEOC alleged that Tropiano subjected a class of employees to a hostile work environment based upon their gender in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”). Tropiano specifically denies all of the EEOC’s allegations.

To resolve the case, Tropiano and the EEOC have entered into a Consent Decree which provided, among other things, that: (1) Tropiano agrees to pay monetary relief; (2) Tropiano agrees that it will not discriminate on the basis of gender; (3) Tropiano will not retaliate against any person because he or she opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree; and (4) Tropiano will train any employee or employees at Tropiano work site(s) with responsibility for responding to Title VII complaints made by Tropiano employees, regarding discrimination, harassment and retaliation, and regarding its policy prohibiting discrimination, harassment and retaliation.

If you believe you have been discriminated against, you may contact the EEOC at (215) 440-2600. The EEOC charges no fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for three (3) years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to the Regional Attorney, EEOC Philadelphia District Office, 801 Market Street, Penthouse, Suite 1300, Philadelphia, PA 19107.



U.S. Equal Employment Opportunity
Commission



Tropiano Transportation Services, Inc.

DATED: 10/11/07

DATED: SEPTEMBER 27, 2007